

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PATRICK McCLAIN, et al.

Plaintiffs,

v.

NATIONAL FIRE & MARINE INSURANCE
COMPANY, et al.

Defendants.

2:05-CV-0706-LRH-RJJ

ORDER

Before the court are non-party Lynn McClain's ("petitioner") motion for appointment as special administratrix (Doc. #141) and motion to substitute party as plaintiff (Doc. #146).

On June 7, 2005, Patrick McClain filed the present action against defendant National Fire & Marine Insurance Co. ("National") to determine whether National had a duty to defend him in an underlying construction defect suit and contribute to the eventual settlement.¹ Doc. #1.

On May 29, 2010, Patrick McClain died. *See* Doc. #141, Exhibit 1. Thereafter, petitioner, Patrick McClain's surviving spouse, filed her present motion for appointment as special administratrix. Doc. #141.

Subsequently, on December 1, 2010, petitioner was appointed as special administrator over the estate of Patrick McClain. *See* Doc. #145, Exhibit A. Letters of special administration were

¹ For a history of the dispute between the parties and the underlying litigation see this court's June 23, 2008 order granting in part and denying in part cross motions for summary judgment (Doc. #88).

1 issued the following day. *See* Doc. #145, Exhibit B. Thereafter, petitioner filed the present motion
2 for substitution. Doc. #146.

3 Initially, the court notes that since filing her motion for appointment, petitioner has been
4 appointed special administratrix over the estate of Patrick McClain. *See* Doc. #145, Exhibit A. As
5 such, the present motion for appointment is moot and the court shall deny it accordingly.

6 As to the motion to substitute, the court has reviewed the documents and pleadings on file
7 in this manner and finds that good cause appears to substitute petitioner, as the special
8 administratrix of the estate of Patrick McClain, as the plaintiff in this action.

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10 IT IS THEREFORE ORDERED that petitioner's motion for appointment as special
11 administratrix (Doc. #141) is DENIED as moot.

12 IT IS FURTHER ORDERED that petitioner's motion to substitute as party plaintiff
13 (Doc. #146) is GRANTED. The clerk of court is directed to substitute Lynn McClain, as special
14 administratrix of the Estate of Patrick McClain, as plaintiff in the underlying action, McClain v.
15 National Fire & Marine Insurance Company, case no. 2:05-cv-0706-LRH-RJJ.

16 IT IS SO ORDERED.

17 DATED this 27th day of April, 2011.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE